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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,982	07/03/2003	Philip Maurice Higgs	3009-1011	4174

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT PAPER NUMBER

3632

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/611,982

Applicant(s)

HIGGS ET AL.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/13/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the first Office Action for serial number 10/611,982, Modular Safety Rail System, filed on July 3, 2003. Claims 1-20 are pending.

#### ***Specification***

The disclosure is objected to because of the following informalities: on page 11, on line 7, "24" should be --18-- and on line 12, "formation" should be --formations--; on page 12, line 17 "there" should be --they--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the face" in line 2. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 11-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,776,521 to Weinert in view of U.S. Patent 5,507,389 to Syrek. Regarding claims 1-7, 11-16 and 20, Weinert discloses a support foot (Fig. 3) comprising: a base plate (24) having upper and lower surface regions and an outer periphery; a plurality of sockets (34) inwardly positioned and upwardly extending from the upper surface, the sockets having a central cylindrical bore and retention means (lower reduced diameter portion of the bore as shown in Fig. 2); a plurality of upwardly extending web formations (horizontal members extending between 26 and 34 as shown in Fig. 2) extending towards the outer periphery and having an upper edge; wherein the distal ends of the location formations are higher than the upper edges of the web formations; a slot (23) extending only part of the distance from the outer periphery toward a location formation; wherein the face of a web formation (web formation surface in contact with the slot) lies adjacent an edge of the slot; wherein two successive support webs have support surfaces thereof facing in both an anti-clockwise direction and a clockwise direction; wherein the base plate, location formations and web formations are integrally formed. Weinert does not teach the lower surface of the base plate including recess regions. Syrek teaches a support comprising a plurality of location formations (16, 18) on an upper surface thereof and a plurality of recess regions (20, 22) axially aligned with the location

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formations on the bottom surface of the support, wherein the recess regions are shaped and positioned such that when one support is stacked on top of a second support a distal end of a location formation (16, 18) engages with a recess region (20, 22) to prevent lateral movement of the support relative to the second support and wherein the non-recessed lower surface portion of the one support is able to be contacted by the non-location formation surface of the second support to thereby resist toppling of the one support. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the lower surface of the support foot of Weinert to include recess regions axially aligned with the location formations in the bottom surface of the support foot because one would have been motivated to provide a means for stacking the support foots when not in use as taught by Syrek (col. 2, line 56 thru col. 3, line 13). Regarding claim 18, Weinert does not teach the outer periphery of the base plate being circular. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shape of the base plate to be of various shapes including circular since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 8-10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinert in view of Syrek and further in view of U.S. Patent 6,554,257 to Kenton. Regarding claims 8-10 and 19, Weinert in view of Syrek discloses the support foot as applied above, but Weinert does not teach the support foot comprising three or four support webs and three or four location

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formations. Kenton teaches a support foot (Fig. 1) including four support feet which are perpendicular to one another. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the support foot of Weinert to include four location formations and four web formations because one would have been motivated to allow the rail sections to be positioned in any position in a 360 degree range as taught by Kenton (col. 3, lines 60-62).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weinert in view of Syrek and further in view of U.S. Patent 5,816,554 to McCracken. Regarding claim 17, Weinert in view of Syrek discloses the support foot as applied above, but Weinert does not teach the support foot comprising a reinforcing formation on each web formation. McCracken teaches a support foot (Fig. 1) including a plurality of web formations (23b generally) having a reinforcing formation (29).. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the web formations of Weinert to include reinforcing formations because one would have been motivated to enhance the structural strength and rigidity of the web formations as taught by McCracken.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: 4073454 to Sauber; 5161784 to Sader; 5560588 to


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Hilliard; 5697500 to Walker; 2001/0006231 to McCracken; 6367762 to Koban;  
6578827 to McCracken; 6588717 to Carnahan et al.

The above references disclose support bases relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.

  
Naschica S. Morrison  
Patent Examiner  
Art Unit 3632  
6/21/04

  
Korie Chan  
Primary Examiner  
Art Unit 3632